

Message Text

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ACTION EB-08

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FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 4138
INFO AMEMBASSY LONDON
AMEMBASSY BONN
AMEMBASSY LIMA

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LIMA PASS ATWOOD

E.O. 11652: GDS
TAGS: EAIR, FR
SUBJECT: POLITICAL IMPLICATIONS OF THE CIVIL AVIATION
SITUATION

REF: (A) PARIS 20735; (B) STATE 164975; (C) PARIS
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1. SUMMARY: THE PAN AM QUESTION THREATENS TO BECOME THE MAJOR BILATERAL IRRITANT IN FRANCO-AMERICAN RELATIONS. IF AIR FRANCE WEST COAST SERVICE IS GROUNDED ON JULY 12 WE CAN EXPECT FRENCH COUNTERACTION LEADING TO A SIGNIFICANT ESCALATION OF A DIFFICULT BUT RELATIVELY LIMITED QUESTION. THIS ISSUE WILL PROBABLY LOOM LARGE IN GISCARD'S MIND WHEN HE MEETS PRESIDENT CARTER AT THE BONN SUMMIT. URGENT FURTHER ATTENTION TO BREAKING THE LOG JAM IS NEEDED. WHETHER IT BE A NEW ATTEMPT AT TERMS FOR ARBITRATION OR RECONSIDERATION OR OUR POSITION ON NEGOTIATIONS, WE RECOMMEND ANOTHER ATTEMPT. THE FRENCH MAY MAKE THEIR OWN NEW PROPOSAL,
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BUT IF THEY DO NOT DO SO PROMPTLY WE SHOULD . END
SUMMARY

2. CIVIL AVIATION, SPECIFICALLY THE PAN AM CHANGE OF GAUGE QUESTION, MAY SOON BE THE BIGGEST SINGLE BILATERAL ISSUE BETWEEN THE UNITED STATES AND FRANCE. BASED UPON AMBASSADOR HARTMAN'S REVIEW OF THE ISSUE WITH MARKS

AND EMBASSY SOUNDINGS WITH FRENCH OFFICIALS, WE RECOMMEND THAT WASHINGTON IMMEDIATELY REEXAMINE THIS CASE TO SEE HOW IT CAN BEST BE DEFUSED CONSISTENT WITH OUR INTERESTS.

3. SHOULD THERE BE NO FURTHER MOVEMENT TOWARD THE NEGOTIATION OF A COMPROMISE (WHICH RESULTS IN ACCEPTABLE ARBITRATION ARRANGEMENTS) OVER THE NEXT WEEK OR SO, THE CAB ACTIONS UNDER PART 213 WILL TAKE EFFECT ON JULY 12 -- THE EVE OF THE BONN SUMMIT. A QUESTION THEN FACING THE PRESIDENTS OF FRANCE AND THE UNITED STATES MAY WELL BE HOW TO UNSCRAMBLE A SITUATION IN WHICH BOTH SIDES HAVE COMMITTED NATIONAL PRESTIGE OVER WHETHER PAN AM CAN CHANGE TO A SMALLER PLANE IN LONDON TO FLY A RELATIVELY SMALL NUMBER OF PASSENGERS INTO PARIS. WITHOUT MINIMIZING SERIOUSNESS OF THIS CASE IN AVIATION CONTEXT, THIS IS HOW IT WILL APPEAR IN GENERAL TERMS.

4. WE CANNOT PREDICT THE EXACT /FRENCH RESPONSE TO SUSPENSION OF AIR FRANCE'S LOS ANGELES SERVICE. BUT THERE WILL BE A REACTION -- MOST PROBABLY NOT LIMITED TO DIPLOMATIC AND PUBLIC PROTESTS. IT WOULD BE A MISTAKE TO ASSUME THERE WILL BE NO FRENCH RETALIATION (WHICH COULD BE AIMED AT TWA'S LOS ANGELES - PARIS FLIGHT AND/OR US CHARTER OPERATIONS) THIS COULD

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OCCUR EVEN THOUGH A COLD CALCULATION WOULD SHOW THAT FRANCE STANDS TO LOSE MORE COMMERCIALLY THAN THE US IF THERE IS A SPIRAL OF RETALIATION AND COUNTER-ACTION.

5. FOR THE FRENCH, CIVIL AVIATION IS A MAJOR AREA OF PRESTIGE, WHETHER OR NOT ITS TRANS-ATLANTIC OPERATIONS ARE PROFITABLE. THEY HAVE A DEEP ROOTED SENSE OF GRIEVANCE WITH THE UNITED STATES, GOING BACK MANY YEARS, COMPOUNDED BY THEIR DIFFICULTIES IN IMPROVING THE ROUTE SCHEDULES, AND CAPPED BY THE 1976-77 CONCORDE DISPUTE. THESE VIEWS HAVE UNDOUBTEDLY WORKED THEIR WAY UP TO THE TOP OF THE GOVERNMENT EVEN THOUGH THE FOREIGN MINISTRY CLAIMS TO BE TRYING TO FIND TENABLE COMPROMISE.

6. IMPLEMENTATION OF PART 213 WILL BE VIEWED AS ANOTHER US EFFORT TO PREVENT FRANCE FROM MAINTAINING HER RIGHTFUL PLACE IN INTERNATIONAL AVIATION. THIS COMBINED WITH THE ELABORATE LEGAL ARGUMENTATION THE FRENCH HAVE DEVELOPED, WILL PROVIDE THE RATIONALE FOR FURTHER ESCALATION. (THE ONLY RESTRAINING ELEMENT IN THIS LOGIC MIGHT BE THE FACT THAT FRENCH LEGAL THEORIES

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EMPHASIZE THE LACK OF A RIGHT TO RETALIATE UNDER THE BILATERAL UNTIL DISPUTE SETTLEMENT PROCEDURES HAVE BEEN EXHAUSTED.) FRENCH OFFICIALS HAVE HARPED ON TWO POINTS, (A) OUR INSISTENCE THAT PAN AM BE ALLOWED TO FLY PENDING RESOLUTION OF THE DISPUTE IS "UNPRECEDENTED" AND (B) OUR DETERMINATION TO FORCE FRANCE TO ACCEPT "PRIOR CONDITION" VIA A THREAT TO AIR FRANCE CONSTITUTES "UNILATERAL" ACTIONS CONTRARY TO THE BILATERAL. EMBASSY SHARES WASHINGTON VIEW ABOUT INTERPRETATION OF THE BILATERAL WITH REGARD TO CHANGE OF GUAGE. NO MATTER HOW CONVINCED WE MAY BE OF OUR INTERPRETATION, HOWEVER, THE FRENCH ARE EQUALLY CONVINCED THEY ARE MAKING A MAJOR CONCESSION--POSSIBLY PREJUDICIAL TO THEIR POSITION IN ARBITRATION PROCEEDINGS--BY PERMITTING ANY INTERIM REGIME FOR PAN AM.

7. AGAINST FOREGOING BACKGROUND AND THE INABILITY OF THE JUNE 28-29 LEGAL NEGOTIATIONS TO COME UP WITH A STAISFACTORY ARRANGEMENT DESPITE EXCELLENT WORK BY MARKS AND HIS DELEGATION, THE USG SEEMS TO HAVE THREE

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ALTERNATIVES:

(A) DO NOTHING NOW; ALLOW 213 TO TAKE EFFECT; EXPECT COUNTERMEASURES AND FURTHER RETALIATION. IF THE USG GOES THIS ROUTE -- AND STICKS WITH IT OVER AN EXTENDED PERIOD OF TIME -- WE MAY BE ABLE TO IMPOSE AN AVIATION SETTLEMENT ON THE FRENCH (INCLUDING OUR VIEWS ON AIR FARES, CHARTER, ETC.), BUT THIS IS NOT CERTAIN.

(B) MAKE ONE MORE TRY AT AN ARBITRATION PACKAGE. THIS WILL MOST PROBABLY HAVE TO ACCOMMODATE FRENCH CONCERNS ON PART 213 AS AN ACTION OR A "THREATENED ACTION" NOT ALLOWED UNDER THE BILATERAL AND POSSIBLY THE QUESTION OF EXHAUSTING LOCAL REMEDIES. IF THESE LATTER ITEMS ARE INCLUDED, ARBITRATION WOULD INEVITABLY TAKE SOME TIME. THUS WE GET BACK TO THE DIFFICULT QUESTION OF COMPROMISE ON THE INTERIM REGIME. THE FRENCH PROPOSAL OF THE LAST FEW DAYS REPRESENTS A STARTING POINT THAT MIGHT BE DEVELOPED FURTHER. IT MIGHT BE ADJUSTED AS FOLLOWS: PANAM TO FLY A FULL SCHEDULE IN THE AUGUST-SEPTEMBER 1978 PERIOD (THE PEAK WESTBOUND TIME) PLUS WHATEVER WEEKS IN JULY OR OCTOBER WE CAN GET AS WELL; REDUCED OPERATIONS FROM NOVEMBER THROUGH APRIL; FULL OPERATIONS FROM APRIL 1 TO THE END OF THE ARBITRATION IN 1979 IF IT WENT THAT LONG. WE DO NOT KNOW HOW SUCCESSFUL WE WOULD BE IN GETTING THIS SCALE OF OPERATIONS FOR PAN AM. BUT -- SINCE IT WOULD BE PART OF THE PACKAGE INVOLVING FULL AND UNRUSHED ARBITRATION OF THE SUBSTANTIVE ISSUES TO WHICH THE FRENCH ATTACH A HIGH VALUE -- IT MIGHT BE POSSIBLE. (WE RECOGNIZE THAT WASHINGTON IS CONCERNED ABOUT INCLUDING PART 213 IN THE ARBITRATION PACKAGE. IF THE ISSUE IS DRAWN TIGHTLY ENOUGH, HOWEVER, RISKS COULD BE LIMITED ASSUMING THAT WE CANNOT PERSUADE THE FRENCH TO DROP

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THE ISSUE.)

(C) CHANGE COURSE AND ATTEMPT TO NEGOTIATE THE ISSUE. THE FRENCH HAVE STRONGLY INDICATED THEIR PREFERENCE FOR NEGOTIATIONS. WE APPEAR TO BE HESITANT FOR BOTH HISTORIC GROUNDS (WE MAINTAIN THAT WE HAVE ALREADY PAID FOR CHANGE OF GAUGE) AND PRECEDENTIAL REASONS IN RELATIONS TO OTHER COUNTRIES. EMBASSY APPRECIATES THESE CONSIDERATIONS. BUT WE SUGGEST ONE MORE QUICK LOOK TO SEE WHETHER ON BALANCE WE MIGHT NOT GAIN FROM BROADER NEGOTIATIONS WITH CHANGE OF GAUGE NOT SUBJECT TO ANY SPECIFIC QUID PRO QUO.

8. TO SUM IT UP, WE BELIEVE THAT THE ALTERNATIVE OF SIMPLY LETTING JULY 12 PASS WITH NO FURTHER EFFORT SERVES NEITHER OUR AVIATION NOR OUR BROADER INTERESTS. AS BETW-EN THE REMAINING TWO ALTERNATIVES (ANOTHER EFFORT AT AN ARBITRATION PACKAGE OR NEGOTIATIONS), EMBASSY LEANS TOWARD THE FORMER. BUT IT IS IMPORTANT THAT ONE OR THE OTHER BE ATTEMPTED. THE FRENCH MAY BE TRYING TO DEVELOP YET ANOTHER PROPOSAL OF THEIR OWN. IF THEY DO NOT MOVE QUICKLY, HOWEVER, EMBASSY RECOMMENDS WE DO SO.

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